IN THE HIGH COURT OF BOMBAY AT GOA

EXCISE APPEAL NO. 2 OF 2007

THE COMMISSIONER OF CENTRAL EXCISE ... Appellant
Versus
M/S. FINOLEX CABLE LTD., ... Respondent

Mr. Joseph Vaz, Central Govt. Standing Counsel for the appellant.

Mr. V. Sridharan, Mr. R. Nambirajan and Ms. P. Kamat, Advocates for the respondents.

Coram:- R. S. MOHITE &
N. A. BRITTO, JJ.

Date:- 10th September, 2007

P.C.

By this appeal, the appellant impugns a Judgment and Order dated 13.11.2006 passed by the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench at Mumbai which has allowed the appeal and set aside an order of the Commissioner of Central Excise, Goa dated 23.12.2005.

2. Facts of the case are that the present respondents M/s. Finolex Cables Ltd., which are manufacturers of jelly filled telephone cables and electric wires and cables obtained requisite raw material being "continuous cast copper wire rod 8 mm" from their hundred percent owned subsidiary M/s. Finolax Wire Products Ltd. which is an industry situated at Usgaon, Goa. This raw material was obtained after the excise duty in respect thereof was paid. After obtaining this raw material, a part of the raw material was utilised for manufacture of the final product and part was utilised for export. In respect of the part that was utilised for export, Cenvat credit which had been claimed was, admittedly, refunded and export rebate was claimed under Rules 18 and 19 of the Central

Excise Rules, 2002. It, therefore, appears that the Cenvat credit has only been obtained in respect of the raw material which was utilised for local manufacture of the finished products by the respondent. These facts have been referred to in the impugned Judgment of the Tribunal and based upon these facts, the appeal has been allowed. We find that this is a case where there does not appear to be a revenue loss to the Department in so far as Cenvat credit in respect of the goods exported has, admittedly, been refunded. The question of claiming export rebate arises when the goods are actually exported.

3. It is nobody's case that part of the raw material was not exported or that the export rebate was claimed on the goods for a quantity other than that was actually exported. It was sought to be contended that claim of Cenvat credit at the first instance itself was fraudulent as the respondents were aware that they were not going to use the goods for manufacture and the real intention of the respondent was to claim Cenvat credit on the exported goods. The facts indicate that a part of the goods was in fact utilised for manufacture. It is possible to envisage situations where the goods procured for the use as input may become surplus for variety of reasons, but it cannot be automatically said that procurement of excess raw material would, by itself, render the claim of Cenvat credit as fraudulent.

4. In the circumstances, we find no substance in the appeal. The same is dismissed.

R. S. MOHITE, J.

N. A. BRITTO, J.

ssm.